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**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

## **SENTENCING MEMORANDUM**

## INTRODUCTION

The Presentence Investigation Report (PIR) computes the total offense level to be 17, with a Criminal History Category of I and recommends a sentence of 24 (twenty-four) months incarceration, followed by a three year term of supervised release, a \$5,000 fine, restitution of \$57,481 and a special assessment of \$1,700. Defendant has filed a Sentencing Memorandum which is in agreement with the PIR as to incarceration of 24 months and three years supervised release. Defendant's Sentencing Memorandum implies a disagreement with the amount of restitution which the United States addresses herein. The United States agrees with the conclusion, in its entirety, reached in the PIR.

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## **RESTITUTION**

The restitution in this case is based on the tax loss to the government. Roger Mai was indicted on 17 counts of Making False Claims to a United States Agency in violation of 18 U.S.C. §287. The amount of income tax refunds falsely claimed on those 17 tax returns totaled \$107,049. Of that amount, \$57,481 was actually deposited into bank accounts owned and controlled by Mai. In addition to the 17 false tax returns, Mai admitted to filing 125 additional false and fraudulent tax returns which resulted in additional tax refunds of \$62,532. The United States seized and forfeited \$53,013 in cash and savings bonds from Mai's home pursuant to a search warrant. The restitution figure comprises the funds that were deposited into Mai's accounts from the false refund claims.

The government bears the burden of proof by a preponderance of the evidence at sentencing to establish the amount of tax loss. United States v. Johansson, 249 F.3d 848, 853 (9<sup>th</sup> Cir. 2001). As shown above, the government is relying on the funds actually received by Mai as the basis for the restitution in this case.

## **CONCLUSION**

For the reasons stated above, the United States respectfully requests that this Court impose a sentence of 24 (twenty-four) months incarceration, followed by a three year term of supervised release, a \$5,000 fine, restitution of \$57,481 and a special assessment of \$1,700.

Respectfully submitted,

JOSEPH RUSSONIELLO  
United States Attorney

Date: February 15, 2008

/s/ Cynthia Stier  
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